

# PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

HR&A ADVISORS, INC.

RFP #7823-02438

## FEASIBILITY STUDY FOR THE DEVELOPMENT OF AFFORDABLE HOUSING

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and **HR&A ADVISORS, INC.**, represented by Phillip Kash, Partner (“**HR&A**” or the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of November 15, 2018 (the “**Effective Date**”).

### RECITALS

**WHEREAS**, on September 21, 2018, the City issued a request for proposals RFP #7823-02438 seeking qualified persons to provide professional services including a feasibility study for the development of affordable housing in New Orleans (the “**RFP**”); and

**WHEREAS**, the Contractor submitted a proposal dated October 22, 2018, and the City has selected the Contractor to perform the professional services described in the RFP.

**NOW THEREFORE**, the City and the Contractor agree as follows:

### ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. **Services**. The Contractor will, in accordance with a twelve-week work plan schedule approved by the City, deliver all aspects of the study required to develop affordability requirements and associated incentives that foster the development of affordable housing while minimizing negative impacts to market rate housing production. The proposed scope of work encompasses four tasks:

#### **1. Task 1: Project Kickoff and Existing Conditions Review**

- a. *Task 1.1: Kickoff Conference Call* – The Contractor’s work on behalf of the City of New Orleans will begin with a kickoff conference call with the City’s project management team and other key staff. During this call, the topics of discussion will include:
  - i. The administration’s vision and goals for affordable housing, specifically inclusionary housing in the City;
  - ii. The existing Smart Housing Mix ordinance;
  - iii. The previous inclusionary market analysis and recommendations completed for the City and its limitations in translating to an effective housing policy;

- iv. The Contractor's approach and proposed methodology to achieve the established objectives for this study; and
  - v. The Contractor's initial trip to New Orleans, described further in Task 1.4 below. This trip will enable us to meet with key public and private sector stakeholders who will be critical in determining the feasibility of an inclusionary policy.
- b. *Task 1.2: Data and Document Request* - Given HR&A's experience developing the Alignment of Public Incentives for Strategic Outcomes Study, the Contractor is very familiar with the New Orleans market, existing studies, and local regulations. However, following the kickoff conference call, the Contractor will furnish a written data request for any additional information pertinent to the study. Among other information, the Contractor will request a copy of all plans and strategy documents that the City would like the Contractor to review.
- c. *Task 1.3: Review of Materials and Existing Conditions* - Upon receipt of the requested information, the Contractor will review it to refresh and build on its existing understanding of local conditions through their recent engagement with the City on the Alignment of Public Incentives for Strategic Outcomes Study. The Contractor will review the Smart Housing Mix Ordinance Study as well as other pertinent materials such as the New Orleans Market Value Analysis (MVA) and previous analyses of the New Orleans market and housing policy there. The findings from this review will be critical in informing discussions during the initial site visit on housing goals and the toolbox available to help realize those goals, and the findings will underpin the analysis undertaken in subsequent tasks of this study. The Contractor will evaluate the strengths and weaknesses of the Smart Housing Ordinance Study and identify gaps to be addressed as part of this study. Additionally, as part of the review of existing conditions, the Contractor will review the current development approval process and leverage the Contractor's existing knowledge of the process to develop a more nuanced and clearly structured process description. This will serve as a baseline understanding for guiding the development of an administrative framework the policy, described further in Task 3.3.
- d. *Task 1.4: Site Visit and Stakeholder Meetings* – The Contractor will travel to New Orleans, and the subcontractor will join the Contractor for a project site visit to meet with the City project team, during which time the Contractor plans to:
- i. Discuss the Contractor's review of materials and key emerging themes that will impact the inclusionary study and resulting recommendations; and



- ii. Confirm the key objectives, scope of work, and schedule for the study.

Additionally, while in New Orleans, the Contractor will begin outreach with key public and private sector stakeholders who will be critical in determining the feasibility of an inclusionary policy and developing the framework for implementation. Engagement of locally active real estate developers, housing nonprofits, and others involved in housing production will be critical in building consensus and mitigating resistance to an inclusionary policy. Through the Contractor's previous experience in New Orleans, The Contractor has established a strong network of stakeholders involved in housing production, and the Contractor will leverage those contacts, as well as specific stakeholders and advocates as directed by the City, to begin outreach. Additional detail on stakeholder outreach, which will occur during the Contractor's initial site visit and remain ongoing over the course of the engagement, is provided under Task 2.2.

## **2. Task 2: Inclusionary Housing Feasibility Analysis**

- a. *Task 2.1: Market Scan* - To inform assumptions for the analysis in Task 2, the Contractor will conduct a high-level market scan to understand the core real estate dynamics at play for multifamily rental units throughout New Orleans. The analysis will utilize resources including: third party databases such as CoStar, Reis, and ESRI Business Analyst; interviews with residential developers and other professionals working in the New Orleans market; and reports such as the Market Value Analysis (MVA) and Smart Housing Mix Study. The market scan will be focused to obtain the following key data points:
  - i. Development costs, including land costs, hard costs for construction (inclusive of labor and materials), and other predevelopment costs such as soft costs and financing costs;
  - ii. Notable recent residential development projects;
  - iii. Total new residential units categorized by product type and affordability status;
  - iv. Geographic differences within the city of in development delivery and product type;
  - v. Residential market rents across the city; and
  - vi. Absorption and occupancy characteristics.
- b. *Task 2.2: Stakeholder Outreach* - In conjunction with Task 2.1, the Contractor will work with the City to identify key project stakeholders to be interviewed, including, but not limited to, local

market-rate and affordable housing developers, neighborhood groups, and community organizations, to provide information informing analytical components of the study. Communication with these groups and inclusion of their input throughout the analysis will be critical in building support for any proposed policy changes. Through its previous experience in New Orleans, the Contractor has established a strong network of contacts with whom to engage as part of this study, including large housing developers such as the Domain Cos., Gulf Coast Housing Partnership, and Historic Restorations Inc. as well as smaller developers such as Jericho Road, Iris Development, and Neville Development. The Subcontractor's participation in the One Table working group, the Greater New Orleans Housing Alliance, and the HousingNOLA Plan also provides a strong network of local housing experts with whom to facilitate conversations as part of the Contractor's outreach. The Contractor will conduct outreach and interviews and, as possible, will target in-person meetings during the Contractor's initial site visit to New Orleans. Along with the market scan, this outreach will reinforce the Contractor's understanding of the key drivers of economic feasibility in New Orleans, including:

- i. Construction costs for various housing typologies in New Orleans;
  - ii. Trends and prospects for residential development in New Orleans;
  - iii. Opportunities and risks associated with redevelopment in various target neighborhoods;
  - iv. Unique challenges of development in different areas of New Orleans;
  - v. Barriers to development in New Orleans;
  - vi. The need for tax abatements or other financial incentives and the types of projects where they would be most beneficial;
  - vii. The process for submitting and obtaining funding and entitlement approvals;
  - viii. The value of bonus density for different development types;
  - ix. Current investor expectations including required hurdle rates and capitalization rates; and
  - x. The likely impact of an affordable requirement on the feasibility of future development in targeted neighborhoods in New Orleans.
- c. *Task 2.3: Incentive Review* - Inclusionary housing programs often attempt to offset the costs imposed by an inclusionary affordability



requirement by providing incentives or other means of value to a developer. The Contractor will evaluate the range of potential incentives to employ for the purpose of affordable housing development, utilizing its extensive local incentive knowledge gained through the Alignment of Public Incentives for Strategic Outcomes Study recently completed by the Contractor. As a result, the Contractor expects to complete this task more quickly and easily than a firm without existing knowledge of local incentives. The specific existing or potential new incentives and tools that the Contractor is likely to evaluate include, among others:

- i. Tax Abatements, Tax Increment Financing, and Payment in Lieu of Taxes ("PILOT");
- ii. Zoning Incentives;
- iii. Impact Fee Waivers;
- iv. Streamlined Development Approvals and Permitting; and
- v. Affordable Housing Fund.

The Contractor will develop a matrix of potential incentives to be employed in the development of affordable housing. The Contractor will provide the benefits and drawbacks of the incentive and how they can best be leveraged to support affordable housing in the context of an inclusionary policy.

Additionally, the Contractor will assess the financial impacts of each incentive when granted as part of an inclusionary policy, which will enable us to furnish recommendations regarding the use and associated level and terms of incentive programs that are most impactful in driving the inclusionary outcomes the City seeks. The analysis will also help to determine whether different combinations of available incentive programs are more effective or impactful in different market types or for different building typologies based on project economics.

- d. *Task 2.4: Financial Analysis and Pro Forma Development* - Because inclusionary requirements limit the rental income that can be generated by the share of units designated as affordable, they directly impact the financial feasibility of new development. To understand the impact of an inclusionary requirement, the Contractor will assess current market conditions and building typologies in New Orleans to create development scenarios representative of development across different neighborhoods / submarkets in New Orleans. The Contractor will then develop a dynamic pro forma model to conduct a financial feasibility assessment for market rate development, consider the impact of an inclusionary requirement on feasibility, and evaluate the toolkit of

incentives that can be used to offset the impact of an inclusionary policy and make new, inclusive development feasible.

- i. *Task 2.4.1: Market Types and Neighborhood Assessment* – The Contractor recognizes that the nature of an inclusionary requirement as a market reliant tool for affordable housing development dictates that a requirement will impact development feasibility differently in different locations. Because market conditions vary across locations, the potential financial gap created by an inclusionary requirement will differ across locations as well. As a result, successful implementation of an inclusionary policy necessitates an understanding of market conditions at the neighborhood level and development of a flexible inclusionary policy structure appropriate for the development conditions and context there.

The Contractor will work with the City to identify the different housing submarkets in New Orleans and assess them based on a set of defined and specific conditions that are indicative of relative market strength and market conditions to support development. The Contractor recognizes that neighborhood boundaries are as much a function of social and cultural conventions as they are political demarcations. The Contractor will work closely with the City to define the submarket study areas and ensure each is appropriately representative of their defined market type.

- ii. *Task 2.4.2: Building Typology and Property Type Assessment* - In addition to market types, there are a number of other variables that also impact development feasibility, including building typology and property type. To account for these variables, the Contractor will consider the various development scenarios that can occur within each market type, including:

- *Building Typology (> 10 units)*
  1. *Low-rise (1-3 stories, stick built garden-style apartments)*
  2. *Mid-rise (4-6 stories, stick built over podium)*
  3. *High-rise (> 6 stories, concrete construction)*
- *Property Type*
  1. *New construction*
  2. *Rehabilitation*



For each identified market type, the Contractor will develop two to three development scenarios reflective of current market conditions and representative of the existing market for development. There are some product types that are unlikely to be appropriate in particular markets (e.g.; high-rise development is unlikely to occur in a soft market). The Contractor will assess the contextual appropriateness for each scenario to ensure it reflects the local market.

- iii. *Task 2.4.3: Financial Analysis for Development and Impact of Affordability Requirements* - For each market type and the associated development typologies defined in Tasks 2.4.1 and 2.4.2, the Contractor will assess the feasibility of market rate development and the impact of an inclusionary housing requirement through the creation of a dynamic financial model structured for the New Orleans market. We will determine threshold rates of return that a housing developer would require and will project rents, vacancies, operating expenses, sales prices, cap rates, and market value for the prototypical development based on capitalized net operating income for the rental units.

The Contractor will use the findings of its development feasibility assessment and evaluation of the reduced revenue associated with an inclusionary requirement to define a total funding gap that will need to be met in order to offset the impact of an inclusionary requirement.

Using incentive information developed as part of Task 2.3, the Contractor will assess the financial impact of typical incentive packages being provided by the City today. The Contractor will then assess the level of incentives required to attain various levels of affordability to understand the City's ability to offset the cost burden associated with an inclusionary requirement. For each defined market type, the Contractor will evaluate the optimal mix of incentives within New Orleans existing incentive toolkit that can make inclusionary housing development feasible

- e. *Task 2.5: In-Lieu Fee Analysis* - As part of any inclusionary housing requirement, the Contractor typically recommends the inclusion of an in-lieu fee option, which can provide funding to support affordable housing that is not being developed by the market, including larger family-size housing units, supportive housing, or housing in locations where market-rate development is not currently occurring. Using the Contractor's national housing policy experience and local knowledge of the New Orleans market, the Contractor will develop a formula for determining an in-lieu fee that

can be paid to meet affordability requirements. The in-lieu fee formula will be based on both project size (and the corresponding number of affordable units) as well as the financial impact identified in Task 2.4, and will ensure commensurate resources are allocated to the in-lieu fee fund as would be provided through on-site affordable units. The formula that the Contractor develops will include a means of indexing the fee to allow for regular increases with the market and periodic resets over time that ensure the fee is set to an appropriate level and can adapt to changing market conditions.

### **3. Task 3: Refinement and Recommendations for Implementation**

- a. *Task 3.1: Recommendations on Mandatory Inclusionary Zoning Requirements* - The Contractor will review its analysis and develop a set of preliminary recommendations for an inclusionary housing policy in New Orleans. Informed by the findings of analysis completed as part of Task 2, recommendations will be based on New Orleans's market context to ensure any proposed policy:
  - i. Appropriately addresses affordability need (i.e. AMI thresholds, percent of affordable units required);
  - ii. Accounts for locational differences in New Orleans (i.e. neighborhood/market strength, zoning); and
  - iii. Accounts for real estate development conditions (i.e. construction costs, project size, new vs. rehab construction, etc.). Recommendations will consider how the findings of the Contractor's analysis can be applied across the city as a whole and translate to an inclusionary policy for New Orleans that is optimally calibrated to deliver on desired policy outcomes.

With an understanding of the tools needed to make inclusionary development financially feasible, the City will be positioned to structure and establish an inclusionary policy appropriate for New Orleans that will promote new affordable housing without hindering the development of new housing supply. Recommendations will be designed to allow all neighborhoods in New Orleans to grow inclusively and sustainably.

- b. *Task 3.2: Policy Implications* – The Contractor recognizes that establishing any inclusionary housing requirement in New Orleans will require legislative changes that allow the policy to be put in place. In addition to the inclusionary policy itself, required legislative changes may include adjustments to existing incentive programs, building code, or other policies. Legislation may also be required for the creation of new programs or offices related to the inclusionary policy. As the Contractor develops recommendations



for an inclusionary housing policy, the Contractor will identify all legislative changes, both local and State, required for the recommended policy. Prior to making any final recommendations that put forth a need for legislative or policy change, the Contractor will first review recommendations with the City project team.

An appropriate inclusionary requirement for New Orleans will need to align with or fit within existing statutes and regulations in the city and the State of Louisiana. To that end, the Contractor will work to ensure that all recommendations are compliant with local and state housing law.

- c. *Task 3.3: Framework for Implementation* - The success of any inclusionary housing policy is dependent on the ability to develop an administrative framework for the policy that allows for smooth implementation and enforcement. To ensure the Contractor's recommended policy is positioned for success in New Orleans, the Contractor will assess the City's current structure and processes associated with development permitting and approvals, incentives allocation, and compliance tracking, and will consider how an inclusionary requirement would impact these administrative elements. The Contractor will also leverage its national experience in affordable housing, and specifically inclusionary housing, to identify best practices for implementation.

Based on existing processes in place in New Orleans and recognized national best practices, the Contractor will then develop a framework for implementing the new inclusionary policy. Key areas of focus for an administrative framework will include, but not be limited to:

- i. Existing administrative processes in the City and alignment of inclusionary procedures and processes with the existing organizational structure;
- ii. Clear understanding of responsibility for new processes across City departments;
- iii. Appropriate allocation of resources for staffing, administration of policy requirements, etc.;
- iv. Communication channels between departments; and
- v. Structure that provides predictability, standardization, and speed of processes within City departments.

#### **4. Task 4: Summary of Findings and Presentation**

- a. *Task 4.1: Summary of Findings* - The Contractor will create a draft report summarizing findings into a clear set of inclusionary policy recommendations appropriate for the housing market in New

Orleans. The report will include the findings of the Contractor's financial analysis, policy recommendations, and a plan for implementation of the recommended policy. The Contractor will share the report with the City and present the findings of the financial analysis in a conference call meeting.

Based on feedback received during the meeting with the City, the Contractor will incorporate updates into a final report of findings and recommendations for a market appropriate inclusionary policy. The final report will incorporate an executive summary highlighting the feasibility of an inclusionary policy in New Orleans and recommendations for the incentives and affordability requirements that New Orleans should adopt as part of an inclusionary housing policy. The report will also include technical appendices with detailed background and supporting information summarizing the Contractor's market typology assessment, the development feasibility of each market, the impact of an inclusionary requirement on development feasibility, the ability of incentives to respond to New Orleans' inclusionary housing needs by meeting the financing gap created by an inclusionary policy, required legislation to implement the recommended inclusionary policy, and a framework for implementation of the policy.

- b. *Task 4.2: Presentation to the City* - In addition to presenting final recommendations to the City's project team, the Contractor recognizes the importance of using its work to communicate the findings and recommendations made in the final report to other City officials or stakeholders identified by the City. In support of this, the Contractor will travel to New Orleans following to present findings to City officials or other relevant stakeholders in New Orleans with whom the project team would like to communicate findings.

5. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP and the Contractor's proposal dated October 22, 2018;

6. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

7. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

8. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

9. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and



**10. Cooperate with the City and any person performing work for the City.**

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

**B. Standards.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with any and all professional standards.

**C. Compliance with Laws.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

**D. Schedule.**

1. The Contractor will perform all work under this Agreement according to the following schedule:

12-week (3-month) schedule:

Task 1: Project Kickoff and Existing Conditions Review – Weeks 1-2

Task 2: Inclusionary Housing Feasibility Analysis – Weeks 2-8

Task 3: Refinement and Recommendations for Implementation – Weeks 8-11

Task 4: Summary of Findings and Presentation – Weeks 9-12

The Contractor will submit a proposed progress schedule to the City within 14 calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: calendared schedule with proposed dates for City and stakeholder meetings and a list of deliverables expected at the conclusion of each phase.

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. Invoices.**

1. The Contractor will submit **monthly** invoices for work performed under this Agreement to the City no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation: receipts for travel expense incurred, percentage and description of work completed.

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

**F. Records and Reporting.**

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

**G. Audit and Inspection.**

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**H. Insurance.**

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

**a. Minimum Requirements:**

- i. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Professional Liability (Errors and Omissions): with limits no less than \$500,000 per claim.

**b. Other Insurance Provisions.** The insurance policies are to contain, or be



endorsed to contain, the following provisions:

- i. Additional Insured Status. The Contractor will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate-holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.
- ii. Primary Coverage. For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor’s coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 5 years after the termination of this agreement
- iv. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- v. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than 60 days.
- vi. Acceptability of Insurers. Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

2. The Contractor will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: **RFP#7823-02438 Feasibility Study for the Development of Affordable Housing**) within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
- b. Copy of the fully executed Agreement;

- c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
  - d. Statements disclosing any policy aggregate limit.
3. Without notice from the City, the Contractor will:
- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
  - b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
  - c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

**I. Indemnity.**

1. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

**ARTICLE II - REPRESENTATIONS AND WARRANTIES**

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;



2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B. Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**C. Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

**D. Employee Verification.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for



any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

### **ARTICLE III - THE CITY'S OBLIGATIONS**

#### **A. Administration.** The City will:

1. Administer this Agreement through the Office of Community and Economic Development;

2. Provide the Contractor with data and copies of relevant City reports such as the Market Value Analysis, the Smart Housing Mix, and other documents deemed necessary for the Contractor's performance of any work required under this Agreement; and

3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

**B. Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the services and conditions required by this Agreement;

2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

### **ARTICLE IV - COMPENSATION**



**A. Rate of Compensation.**

1. The City will pay the Contractor in accordance with the following rate: **\$130,000.00** with up to **\$6,000.00** in additional expenses incurred. Compensation will be remitted monthly based on percentage of task completion and incurrence of expenses.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4. The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**B. Maximum Amount.** The maximum aggregate amount payable by the City under this Agreement is ONE HUNDRED THIRTY-SIX THOUSAND AND NO/100 (\$136,000.00) DOLLARS.

**ARTICLE V - DURATION AND TERMINATION**

**A. Initial Term.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. Extension.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for 4 additional one-year terms.

**C. Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

**D. Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**E. Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply



with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

**F. Suspension.** The City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

## **ARTICLE VI - PERFORMANCE MEASURES**

**A. Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

**B. Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

## **ARTICLE VII – LIVING WAGES**

To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801. *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("**Living Wage**"). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

## **ARTICLE VIII - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM**

**A. In General.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

**B. Monitoring.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or



- other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
  4. Reviewing of records and reports; and/or
  5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

**C. Cooperation.** The Contractor shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. The Contractor shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Contractor.
  - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;
  - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Contractor is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
  - a. The Contractor shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
  - b. Reports are required even when no activity has occurred in a monthly period.

- c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
  - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
  - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.
- D. Post-Award Modification.** The OSD may grant a post-award modification request if:
- a. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
  - b. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

## **ARTICLE IX - NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or



other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**D.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE X - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**B. Exclusion of Worker's Compensation Coverage.** The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

## **ARTICLE XI - NOTICE**

**A. In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Office of Community and Economic Development  
1340 Poydras Street, Suite 1800  
New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To the Contractor:

Phillip Kash  
HR&A Advisors, Inc.  
925 15<sup>th</sup> Street NW, 3<sup>rd</sup> Floor  
Washington, DC 20005

**B. Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

**C. Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

## **ARTICLE XII - ADDITIONAL PROVISIONS**

**A. Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

**B. Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

**C. Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**D. Conflicting Employment.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

**E. Construction of Agreement.** Neither party will be deemed to have drafted this



Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

**F. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**G. Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

**H. Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**I. No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**J. Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**K. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**L. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; RFP No. 7823-02438; Contractor's Proposal

**M. Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**N. Ownership of Records.** Upon final payment, all data collected and all products of work



prepared, created or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**O. Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

**P. Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Q. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**R. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

**S. Subcontractor Reporting.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are



submitted.

**T. Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**U. Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

### **ARTICLE XIII - ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**[The remainder of this page is intentionally left blank]**

**[SIGNATURES CONTAINED ON NEXT PAGE]**

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 27<sup>th</sup> of December, 2018

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

HR&A Advisors, Inc.

BY: 

Phillip Kash, Partner





# REQUEST FOR PROFESSIONAL SERVICES SOLICITATION<sup>1</sup>

1. Director or Manager Ellen Lee *Ellen* User Entity: Community & Economic Development Date: 9/13/18  
(circle one) (print name & initial)

2. Deputy Mayor of User Entity: Gilbert Montañó *Gilbert* Date: 9/17/18  
(print name & initial)

To: CHIEF PROCUREMENT OFFICER (CPO)

Attachment(s): (a) DRAFT RFP/RFQ  
(b) Proposed Announcement

User Entity Employee Contract Monitor:

Name: Courtney Stuckwisch

Phone: 504-658-4075

Email: castuckwisch@nola.gov

Pursuant to Executive Order MJL 10-05, this requests your approval of the professional services solicitation described below. A draft RFP/RFQ and announcement are attached for your review.

1. Describe the need or purpose (supplement as needed):

Study the feasibility for the development of affordable housing in New Orleans.

2. If known, describe the means proposed to satisfy the need or purpose:

Analysis of affordable housing costs, review of existing resources for affordable housing, and feasibility study for inclusionary zoning

3. State how the needed services are professional services.<sup>2</sup>

Consulting services and expertise in real estate analysis and affordable housing needed.

4. State the maximum permissible compensation and expenses payable under the contract:

	Total
Estimated Cost	<u>\$95,000</u>

5. Source of funding:

\$80,000; \$15,000

General Fund  
CDBG Funding  
Other (Specify) NHIF; Enterprise

6. Requisition Number: 18169768

7. Announcement Plan: ***Departments will submit all approved RFPs/RFQs to the Purchasing Bureau for print and website publication.***

***Note: Ex. Order MJL 10-05 requires publication at least once during each of two consecutive weeks in the official City journal.***

## CPO ACTION:

Solicitation: ☐ APPROVED ☐ DISAPPROVED.

DBE waived? No

Remarks: \_\_\_\_\_ Initial & Date: \_\_\_\_\_

<sup>1</sup> Professional Services procurements costing \$15,000 or less do not require approval by this means. (City Code Sect. 2-7).

<sup>2</sup> "Services that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill..." (Ex. Order MJL 10-05)

**MAINTAIN THIS APPROVED FORM WITH ALL LATER RECOMMENDATIONS, APPROVALS, DOCUMENTS, AND CONTRACTS.**